

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ARTHUR R. BIAGI,

Plaintiff,

- against -

McALLISTER TOWING &
TRANSPORTATION CO., INC., HARBOR
PILOTS OF N.Y. N.J., LLC,

Defendants.

MEMORANDUM AND ORDER

11-CV-3567

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 23 2012 ★


BROOKLYN OFFICE

JACK B. WEINSTEIN, United States District Judge:

For the reasons stated orally and on the record at a hearing held on February 15, 2012, defendants' motion to dismiss plaintiff's complaint is granted in part and denied in part.

Defendants' motion is denied as to plaintiff's age discrimination claims brought pursuant to federal, state, and local antidiscrimination law. Plaintiff's failure to name the pilot association defendant in his EEOC charge is no barrier to his claims against that organization given its close relationship with McAllister Towing. *See Johnson v. Palma*, 931 F.2d 203, 209-10 (2d Cir. 1991). The motion is denied as to plaintiff's defamation claim; that claim may go forward except as to the portion predicated on a statement that was one of opinion, which was dismissed orally. The defendants' motion is denied as to plaintiff's claim for tortious interference.


Defendants' motion is granted as to plaintiff's claims for intentional infliction of emotional distress ("IIED") and breach of contract. The IIED claim is dismissed since plaintiff's allegations of discrimination, even if true, do not describe conduct sufficiently outrageous to permit recovery. *See Stuto v. Fleishman*, 164 F.3d 820, 827-28 (2d Cir. 1999) (applying New York law). The breach of contract claim is dismissed since plaintiff has conceded that his employment relationship with McAllister Towing was at-will.



The plaintiff has withdrawn his claim brought pursuant to the federal Racketeer Influenced and Corrupt Organizations Act. *See* 18 U.S.C. § 1961 *et seq.*

The magistrate judge is respectfully requested to expedite discovery as to plaintiff's age discrimination, remaining defamation, and tortious interference claims.

SO ORDERED.



Jack B. Weinstein
Senior United States District Judge

Date: February 16, 2012
Brooklyn, New York